

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

ACTIVE CREATIONS LLC,

Plaintiff,

v.

BEIJING JINWEI KANGDA MEDICAL  
INSTRUMENT Ltd.,

Defendant.

Civil Action No. 2:21-cv-00406-RCY-RJK

**PLAINTIFF’S MOTION TO CORRECT CLERICAL ERROR**

PURSUANT TO Federal Rule of Civil Procedure 60(a), Plaintiff, Active Creations LLC (“Active”), moves the correct a clerical error in Active’s Notice of Voluntary Dismissal (ECF No. 31) and the Final Order (ECF No. 32) on the following grounds:

1. Active commenced this action, seeking (i) a declaratory judgment invalidating certain patents, (ii) a TRO, and (iii) other relief (ECF No. 1).
2. The Court denied Active’s motion for entry of a TRO (ECF No. 14) but granted Active’s motion for leave to use alternative service (ECF No. 15).
3. Active then made service of the summons and complaint (ECF No. 18) and filed a motion for a preliminary injunction (ECF No. 19).
4. After service and while the motion was pending, the parties negotiated a settlement. Active then filed a notice of voluntary dismissal, which mistakenly and inadvertently, indicated that the action should be dismissed “with prejudice” (ECF No. 31). The Court then dismissed the action with prejudice but retained jurisdiction to enforce the parties’ settlement (ECF No. 32).

5. In their settlement agreement, the parties agreed that “Active shall dismiss the Action *without prejudice*” (emphasis added). Active now seeks to correct the clerical scrivener’s error in the notice of voluntary dismissal (ECF No. 31), and consequently to have the Court enter a corrected final order.

6. Under the rules, the Court “may correct a clerical mistake or mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” FED. R. CIV. P. 60(a). In addition to mistakes by the court or clerk, this authority allows the Court “to correct mistakes by the parties.” 11 WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 3d, § 2854 at 301 & n.3 (2012); *accord, e.g., Holmes v. AC & S, Inc.*, 388 F. Supp. 2d 663, 669 (E.D. Va. 2004) (holding that under Rule 60(a) the Court “may rectify a drafting error committed by the parties” and amending dismissal order). Active respectfully requests that the Court exercise that authority to correct the final order in this matter.

WHEREFORE, Active requests that the Court enter a corrected final order. A proposed order is submitted herewith.

***The parties do not seek oral argument on this procedural motion.***

Dated: October 1, 2021

Respectfully submitted,

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***Attorneys for Plaintiff Active Creations LLC***